

**General Information Letter:** Response to taxpayer inquiry re estate tax.

March 30, 1998

Dear:

This is in response to your letter dated March 16, 1998, in which you request a General Information Letter. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information we have enclosed a copy of 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department.

Although you have not specifically requested either type of ruling, the information you have provided requires that we respond with a general information letter.

In your request you stated:

I have a question about the treatment of basis of real property (both for a personal residence located within the state of Illinois and other real property located in Wisconsin) to be transferred into a joint revocable trust by a husband and wife, during their lifetime. The situs of the trust will be Illinois. The personal residence was originally solely owned by the wife. The Wisconsin property was originally owned by the husband.

My question is, upon the death of one of the spouses, how will the basis in the property be treated for capital gains purposes. I assume that the property, despite having been transferred into joint revocable trust, will receive at least a partial step-up in basis or will both the decedent's and the survivor's interest receive the step-up.

It is clear from the I.R.C. that federal treatment is determined by state law. One telephone advisor for the Illinois Department of Revenue suggested that both interests would receive the step-up. However, I was also advised by the telephone counselors to seek a letter ruling. My assumption was that it would only be the decedent's interest, as Illinois is a common-law title state.

Please advise about the letter ruling procedure, costs and additional information required.

## Department Analysis

As I mentioned during the telephone conversation we had on March 30, 1998, the Department of Revenue does not administer the estate tax for Illinois. Thus, I am unable to answer your question concerning the capital gains treatment of the basis in marital property upon the death of one spouse. However, as the Attorney General's office administers the estate is tax you may wish to address your question to the following address:

Mr. John Brunsman  
Office of the Attorney General  
Bureau of Revenue Litigation  
500 S. Second St.  
Springfield, Illinois 62706  
(217) 782-9580

I hope that this has been helpful to you. If you have additional questions please feel free to contact me at the above address.

Sincerely,

Charles E. Matoesian  
Staff Attorney (Income Tax)